

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PEREGRINE FIXED INCOME LIMITED  
(in liquidation),  
Plaintiff,

vs.

JP MORGAN CHASE BANK (formerly  
known As The Chase Manhattan  
Bank and having merged with  
Morgan Guaranty Trust Company  
of New York),  
Defendant.

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DEPOSITION OF JP MORGAN  
BY DON THOMPSON  
New York, New York  
Wednesday, November 30, 2005

Reported by:  
WENDY D. BOSKIND, RPR  
JOB NO. 179637

<p style="text-align: right;">Page 14</p> <p>1 Thompson</p> <p>2 interpret that agreement.</p> <p>3 A. Sure. As I said before, I sort</p> <p>4 of grew up with the derivatives market,</p> <p>5 which started in the 1980's. I was</p> <p>6 somewhat involved in the process of ISDA,</p> <p>7 putting together the first standard ISDA</p> <p>8 Master Agreement, which was published in</p> <p>9 1987. I was an active member of the</p> <p>10 documentation committee when the agreement</p> <p>11 was redrafted, in 1992, and was</p> <p>12 extensively involved in its recent</p> <p>13 re-publication as a 2002 version. I spent</p> <p>14 virtually all of my professional day on</p> <p>15 derivatives matters, a lot involving</p> <p>16 documentation in the ISDA Master</p> <p>17 Agreement. I am co-chair of ISDA's</p> <p>18 documentation committee, so I run across</p> <p>19 the ISDA Master with some degree of</p> <p>20 frequency.</p> <p>21 Q. And in your affidavit in the</p> <p>22 Hong Kong preceding, I believe you said</p> <p>23 you were an active member of the ISDA</p> <p>24 committee that drafted the ISDA Master</p> <p>25 Agreement?</p>	<p style="text-align: right;">Page 16</p> <p>1 Thompson</p> <p>2 they take place annually, semi-annually?</p> <p>3 A. They take place as needed.</p> <p>4 Q. So there is not an annual</p> <p>5 meeting of the ISDA committee?</p> <p>6 A. There are periodic meetings</p> <p>7 scheduled by ISDA. There is not a fixed</p> <p>8 annual date.</p> <p>9 Q. Do you ever speak at ISDA</p> <p>10 conferences?</p> <p>11 A. Yes.</p> <p>12 Q. And how often have you done</p> <p>13 that?</p> <p>14 A. Probably, on average, six times</p> <p>15 a year for the past ten years.</p> <p>16 Q. Are those all speaking to issues</p> <p>17 having to do with the ISDA Master</p> <p>18 Agreement?</p> <p>19 A. No. Some of them deal with</p> <p>20 issues concerning, for example, the ISDA</p> <p>21 form of credit support annex, ISDA credit</p> <p>22 derivatives definitions, they all deal</p> <p>23 with some form of ISDA documentation</p> <p>24 issues but not all with the ISDA Master</p> <p>25 Agreement.</p>
<p style="text-align: right;">Page 15</p> <p>1 Thompson</p> <p>2 A. That is correct.</p> <p>3 Q. Can you tell me what types of</p> <p>4 things you do as part of that committee?</p> <p>5 A. Sure. What you do is</p> <p>6 essentially review drafts which are</p> <p>7 prepared by ISDA's counsel, have internal</p> <p>8 discussions with people at JPMorgan</p> <p>9 concerning the structure and substance of</p> <p>10 that agreement, participate in industry-</p> <p>11 wide meetings at which various revisions</p> <p>12 to that agreement are proposed or</p> <p>13 rejected, and generally track the process</p> <p>14 of the drafting of the document --</p> <p>15 (Pause in proceedings.)</p> <p>16 A. -- from its initial drafting</p> <p>17 through to its publication.</p> <p>18 Q. And who is ISDA's counsel?</p> <p>19 A. ISDA's counsel at the time was</p> <p>20 Cravath Swaine &amp; Moore.</p> <p>21 Q. And currently?</p> <p>22 A. Currently, it is -- ISDA has a</p> <p>23 number of counsel, Allen &amp; Overy is one of</p> <p>24 them.</p> <p>25 Q. In these committee meetings, do</p>	<p style="text-align: right;">Page 17</p> <p>1 Thompson</p> <p>2 Q. All right. With regards to the</p> <p>3 closeout of the Peregrine Fixed Income</p> <p>4 Limited positions in 1998, can you</p> <p>5 describe what your general role in that</p> <p>6 procedure was.</p> <p>7 A. Sure. My general role was to</p> <p>8 provide legal advice in connection with</p> <p>9 that process.</p> <p>10 Q. From a legal perspective, were</p> <p>11 you the person in charge of that effort on</p> <p>12 JPMorgan's behalf?</p> <p>13 A. I am not exact--</p> <p>14 MR. FELDBERG: I want to note an</p> <p>15 objection to the form of the</p> <p>16 question.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: Okay.</p> <p>19 A. I am struggling, because the</p> <p>20 ethos of the JPMorgan legal department at</p> <p>21 the time was very much a so-called flat</p> <p>22 organizational structure where people</p> <p>23 would work collaboratively and the words</p> <p>24 of, quote, anyone being "in charge"</p> <p>25 (indicating) were not part of that</p>

5 (Pages 14 to 17)



<p style="text-align: right;">Page 150</p> <p>1 Thompson</p> <p>2 JPMorgan or any other person or persons</p> <p>3 that were contacted by or on behalf of</p> <p>4 JPMorgan".</p> <p>5 Are you competent to testify</p> <p>6 about that area?</p> <p>7 A. I believe the calculation</p> <p>8 statement that was provided broke out the</p> <p>9 valuation of the specified transactions by</p> <p>10 Reference Market makers. I don't know</p> <p>11 whether we were contacting any of the</p> <p>12 other enumerated entities in item 6.</p> <p>13 Q. So can you tell me why the</p> <p>14 Reference Market makers were only</p> <p>15 contacted on January 15th, 1998 for the</p> <p>16 Thai baht transactions versus some other</p> <p>17 debt?</p> <p>18 A. I cannot tell you specifically</p> <p>19 why it was that day as opposed to any</p> <p>20 other day.</p> <p>21 I suspect it was because we did</p> <p>22 not have the requisite information needed</p> <p>23 to contact them until that day.</p> <p>24 Q. But that's your speculation; is</p> <p>25 that right?</p>	<p style="text-align: right;">Page 152</p> <p>1 Thompson</p> <p>2 was, first of all, in accordance with the</p> <p>3 provisions of the agreement, which does</p> <p>4 not require or which does not prohibit the</p> <p>5 obtaining of indicative quotations and,</p> <p>6 secondly, it's in accordance with market</p> <p>7 practice.</p> <p>8 Q. Well, we will start, then, with</p> <p>9 ISDA Master Agreement.</p> <p>10 Where in the agreement does it</p> <p>11 say you were permitted to get indications?</p> <p>12 A. It does not prohibit the</p> <p>13 obtaining of indications.</p> <p>14 Q. But it also does not say --</p> <p>15 A. It does not expressly provide</p> <p>16 that indicative quotations are to be</p> <p>17 obtained.</p> <p>18 Q. And then, with regards to market</p> <p>19 practice, maybe you can explain to me what</p> <p>20 you mean, that that is proper or used in</p> <p>21 market practice.</p> <p>22 A. It is my understanding that</p> <p>23 most, if not all, major dealers, when</p> <p>24 involved in closeouts, obtain indicative</p> <p>25 quotations.</p>
<p style="text-align: right;">Page 151</p> <p>1 Thompson</p> <p>2 A. That's my understanding.</p> <p>3 If you care to draw a</p> <p>4 distinction between "speculation" and</p> <p>5 "understanding", so be it.</p> <p>6 Q. Okay. Well, did you gain that</p> <p>7 understanding by talking to other</p> <p>8 individuals?</p> <p>9 A. No.</p> <p>10 Q. And, so, it's your guess, as you</p> <p>11 sit here today, as to --</p> <p>12 A. My understanding at the time was</p> <p>13 as soon as we were ready and had the</p> <p>14 requisite information to obtain market</p> <p>15 quotations for Reference Market makers, we</p> <p>16 did so.</p> <p>17 Q. Okay.</p> <p>18 A. And we did not do so until we</p> <p>19 had that requisite level of information.</p> <p>20 Q. And with regards to valuing the</p> <p>21 specified transactions by the Reference</p> <p>22 Market makers, do you know why JPMorgan</p> <p>23 only requested indications versus actual</p> <p>24 market quotes?</p> <p>25 A. I believe that was -- yes, that</p>	<p style="text-align: right;">Page 153</p> <p>1 Thompson</p> <p>2 Q. Give me one second. (Pause.)</p> <p>3 You have testified that there</p> <p>4 were approximately 12 other transactions --</p> <p>5 strike that.</p> <p>6 You have testified that there</p> <p>7 were approximately 12 other closeouts that</p> <p>8 you were involved in under an ISDA Master</p> <p>9 Agreement. Can you tell me, of those</p> <p>10 other situations, how many of those used</p> <p>11 indications in market quotations versus</p> <p>12 real quotes?</p> <p>13 A. I can't give you a specific</p> <p>14 breakdown of that.</p> <p>15 I suspect most of them have</p> <p>16 involved either being silent on the point,</p> <p>17 in which case the Reference Market makers</p> <p>18 can choose to quote either on a firm or</p> <p>19 indicative basis or have said that</p> <p>20 indicative quotations are okay. They have</p> <p>21 taken place over a 20-year career, they</p> <p>22 are sporadic and episodic events. I</p> <p>23 simply cannot recall how many of them in</p> <p>24 each category.</p> <p>25 Q. Sure.</p>



<p style="text-align: right;">Page 154</p> <p>1 Thompson</p> <p>2 A. And when I mentioned "market</p> <p>3 practice", just to be clear, I believe</p> <p>4 "market practice" often involves you ask</p> <p>5 for quotations, there is no statement as</p> <p>6 to whether they are firm or indicative,</p> <p>7 and the Reference Market makers can choose</p> <p>8 to quote on either basis.</p> <p>9 Q. Am I correct in stating that</p> <p>10 JPMorgan provided some of the variables to</p> <p>11 these various transactions to the</p> <p>12 Reference Market makers when obtaining the</p> <p>13 quotations; is that right?</p> <p>14 A. I believe -- I am not sure</p> <p>15 whether -- some of it is accurate.</p> <p>16 I know, in some of the</p> <p>17 transactions, we did provide one of the</p> <p>18 variables, which was the spot exchange</p> <p>19 rate at the time.</p> <p>20 Q. And, based on your understanding</p> <p>21 of the ISDA Master Agreement, is that</p> <p>22 appropriate?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because it enables parties who</p>	<p style="text-align: right;">Page 156</p> <p>1 Thompson</p> <p>2 simply asked for a quote without providing</p> <p>3 the spot rate; correct?</p> <p>4 A. Yes, yes, we could have done</p> <p>5 that.</p> <p>6 Q. And is that -- has that been</p> <p>7 done on other occasions that you have been</p> <p>8 involved in?</p> <p>9 A. Uh -- I don't recall the precise</p> <p>10 breakdown between options, forwards, and</p> <p>11 swaps, and in the other closeouts I have</p> <p>12 worked on.</p> <p>13 I think what was different here,</p> <p>14 and led us to that conclusion, was it was</p> <p>15 overwhelmingly an option book.</p> <p>16 Now, one of the things we were</p> <p>17 mindful of, frankly, in doing that process</p> <p>18 and, again, remember that the market</p> <p>19 quotation provision is a liquidated</p> <p>20 damages provision, which is designed to</p> <p>21 provide objective third-party input into</p> <p>22 the value of transactions, to ensure that</p> <p>23 the legitimate interests of both the</p> <p>24 non-defaulting party and the defaulting</p> <p>25 party are protected, is that if we were to</p>
<p style="text-align: right;">Page 155</p> <p>1 Thompson</p> <p>2 are providing, for instance, a valuation</p> <p>3 of an option position, to isolate the</p> <p>4 value of the option as opposed to the</p> <p>5 separate immaterial value -- or</p> <p>6 differences in value which may be</p> <p>7 attributable to using different spot</p> <p>8 rates.</p> <p>9 As a practical matter, when you</p> <p>10 are getting a quote for an option</p> <p>11 position, it will be more difficult to</p> <p>12 obtain that quotation if you also require</p> <p>13 that option trader who is trading options,</p> <p>14 not the spot position, to provide both the</p> <p>15 spot position and the intrinsic value of</p> <p>16 the option.</p> <p>17 Q. Was --</p> <p>18 A. So we made the decision at the</p> <p>19 time to provide the spot rate in order to</p> <p>20 isolate and fix that and enable the</p> <p>21 quoting dealers to provide quotes on the</p> <p>22 value of the option which was, by far, the</p> <p>23 overwhelming value of the position, as I</p> <p>24 understand it.</p> <p>25 Q. But JPMorgan could have just</p>	<p style="text-align: right;">Page 157</p> <p>1 Thompson</p> <p>2 ask for quotations on a basis that other</p> <p>3 dealers would find burdensome or onerous</p> <p>4 to provide them, the result is that you</p> <p>5 fall away from the market quotation</p> <p>6 provision and you fall back to the loss</p> <p>7 provision, which does not have this</p> <p>8 objective third-party input aspect the</p> <p>9 market quotation does.</p> <p>10 Q. (Pause.)</p> <p>11 THE WITNESS: Is there any way</p> <p>12 he can just ask you the questions?</p> <p>13 Q. No.</p> <p>14 So, it's your testimony that the</p> <p>15 purpose of having this type of procedure</p> <p>16 is to get an objective third-party</p> <p>17 quotation that values these things</p> <p>18 independently in the market; is that</p> <p>19 right?</p> <p>20 A. That is the ra--</p> <p>21 MR. FELDBERG: Excuse me one</p> <p>22 second.</p> <p>23 Objection to the form.</p> <p>24 Please answer.</p> <p>25 THE WITNESS: Okay.</p>

40 (Pages 154 to 157)



<p style="text-align: right;">Page 166</p> <p>1 Thompson</p> <p>2 know, it's not so clear in a bankruptcy,</p> <p>3 it's not such an issue in a bankruptcy,</p> <p>4 but in these scenarios you always want to</p> <p>5 be careful about client confidentiality</p> <p>6 and making sure that any information which</p> <p>7 is imparted to other dealers is only</p> <p>8 information in the public domain.</p> <p>9 You want to make sure that</p> <p>10 people are not acting in a way to try and</p> <p>11 extract additional value from the client</p> <p>12 in a situation where the agreement</p> <p>13 provides a clear legal framework as to how</p> <p>14 you determine the value of the</p> <p>15 transactions.</p> <p>16 You want to act generally as a</p> <p>17 responsible dealer who is acting, frankly,</p> <p>18 with a twin mandate. One is to protect</p> <p>19 the assets of the firm and your own claim</p> <p>20 against the estate of the bankrupt entity</p> <p>21 and, number two, who enables the</p> <p>22 counterparty to realize fair value within</p> <p>23 the bounds of the agreement of the value</p> <p>24 of the positions that it defaulted on.</p> <p>25 Q. Did JPMorgan hedge its risk on</p>	<p style="text-align: right;">Page 168</p> <p>1 Thompson</p> <p>2 to any hedging that JPMorgan did during</p> <p>3 January 1998 in connection with these</p> <p>4 transactions, in whatever form it took?</p> <p>5 A. No.</p> <p>6 MR. FELDBERG: Excuse me. I am</p> <p>7 going to object to the form of the</p> <p>8 question.</p> <p>9 You may answer. And I think you</p> <p>10 did answer.</p> <p>11 A. No.</p> <p>12 Q. You are not competent?</p> <p>13 A. No, I am not competent to</p> <p>14 testify.</p> <p>15 Q. You have discussed, generally,</p> <p>16 how fairness is one of the goals of the</p> <p>17 ISDA Master Agreement. And, so, my</p> <p>18 question is, is, how does obtaining</p> <p>19 indications, as opposed to real quotes,</p> <p>20 allow for a fairness in determining the</p> <p>21 actual value of how these things should</p> <p>22 have been closed out?</p> <p>23 A. Okay, that's a very good</p> <p>24 question, with a very simple answer.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 167</p> <p>1 Thompson</p> <p>2 January 12th, 1998?</p> <p>3 A. Again, I don't run a trading</p> <p>4 book, so, aside from the imprecision of</p> <p>5 the question, I don't know the answer to</p> <p>6 it.</p> <p>7 We can talk about, really, what</p> <p>8 the question means, because to say "hedge</p> <p>9 its risk" is meaningless to me, because</p> <p>10 there are a bundle of risks that one has</p> <p>11 when one enters into a derivative</p> <p>12 transaction; right? You have credit risk,</p> <p>13 which can be hedged in the credit default</p> <p>14 market, you have the market risk from the</p> <p>15 underlying positions.</p> <p>16 So, I am not even sure what risk</p> <p>17 you are talking about, when you say did we</p> <p>18 hedge our risk.</p> <p>19 To my understanding, we did not</p> <p>20 undertake any additional hedging</p> <p>21 activities on January 12th or thereafter.</p> <p>22 Q. Okay. And let me ask you, are</p> <p>23 you competent to testify on the issue of</p> <p>24 hedging -- strike that.</p> <p>25 Are you competent to testify as</p>	<p style="text-align: right;">Page 169</p> <p>1 Thompson</p> <p>2 A. If you are in a situation where</p> <p>3 dealers, for instance, are unwilling to</p> <p>4 provide firm quotes but are willing to</p> <p>5 provide indicative quotes which, as we all</p> <p>6 know, are often extremely close to the</p> <p>7 eventual firm level, if you go through the</p> <p>8 process of asking a dealer to (indicating)</p> <p>9 firm up his indicative quote, you have</p> <p>10 provided for the realization of</p> <p>11 substantial value to your defaulting</p> <p>12 counterparty and, in my view, that is</p> <p>13 absolutely fair, commercially-reasonable,</p> <p>14 and in good faith.</p> <p>15 Remember, that the ISDA</p> <p>16 agreement market quotation process is a</p> <p>17 liquidated damages provision and, in fact,</p> <p>18 the agreement in Section 6 provides</p> <p>19 exactly that, both parties make an</p> <p>20 acknowledgment that amounts calculated</p> <p>21 pursuant to Section 6 are -- I believe the</p> <p>22 phrase is a reasonable pre-estimate of</p> <p>23 damages, and both parties acknowledge that</p> <p>24 if obtained in accordance with the process</p> <p>25 it's not a penalty.</p>

43 (Pages 166 to 169)



<p style="text-align: right;">Page 170</p> <p>1 Thompson</p> <p>2 The significance of that, in the</p> <p>3 context of your question, is -- and this</p> <p>4 is why I described the twin goals that one</p> <p>5 needs to respect when one is conducting a</p> <p>6 closeout, you need to protect the</p> <p>7 interests of -- the legitimate interests</p> <p>8 of the non-defaulting party. Remember, he</p> <p>9 didn't default, he didn't go bankrupt, he</p> <p>10 would have preferred that the other party</p> <p>11 performed his remaining payment</p> <p>12 obligations in accordance with their</p> <p>13 original terms.</p> <p>14 On the other hand, the</p> <p>15 defaulting party does have a legitimate</p> <p>16 interest of realizing -- let's just call</p> <p>17 it "fair value", for want of a better</p> <p>18 term, for the positions that he has</p> <p>19 defaulted on.</p> <p>20 The agreement clearly provides</p> <p>21 that the process, the market quotation</p> <p>22 process, is an estimate only and may well</p> <p>23 not be the value that the defaulting party</p> <p>24 could have realized if, for example, he</p> <p>25 were to have conducted an auction as a</p>	<p style="text-align: right;">Page 172</p> <p>1 Thompson</p> <p>2 Reference Market makers for quotes, I</p> <p>3 believe that was Piers. So I do not know</p> <p>4 the answer to that question.</p> <p>5 Q. Are you competent to testify to</p> <p>6 anything relating to the actual quotes</p> <p>7 that were obtained in this case for the</p> <p>8 specified transactions?</p> <p>9 A. I --</p> <p>10 MR. FELDBERG: Objection to the</p> <p>11 form.</p> <p>12 You may answer.</p> <p>13 A. I was not the person on the</p> <p>14 ground when the quotes were obtained,</p> <p>15 which needed to be obtained during the</p> <p>16 trading day in the Asia-Pacific time zone.</p> <p>17 So, no, I am not competent to testify to</p> <p>18 that.</p> <p>19 Q. Referring you back to Exhibit 2,</p> <p>20 which is the 30(b)(6) Notice, Number 7 at</p> <p>21 the bottom of page 4 reads: "The role of</p> <p>22 JPMorgan's trading staff, accounting</p> <p>23 staff, legal staff, risk staff, and</p> <p>24 compliance staff, in terminating and</p> <p>25 closing out the specified transactions in</p>
<p style="text-align: right;">Page 171</p> <p>1 Thompson</p> <p>2 going concern and auctioned off all of the</p> <p>3 transactions to the highest bidder.</p> <p>4 The clearest evidence of that is</p> <p>5 the fact that you get four quotations, you</p> <p>6 disregard the high, you disregard the low.</p> <p>7 The objective is to get rid of the</p> <p>8 outliers, look at the middle band</p> <p>9 (indicating) of reasonable value of the</p> <p>10 transactions, and that's the amount that's</p> <p>11 paid to the defaulting party.</p> <p>12 Q. Okay.</p> <p>13 A. So that is, I hope, responsive</p> <p>14 to your question as to why I think the</p> <p>15 market quotation process undertaken in</p> <p>16 connection with the obtaining of</p> <p>17 indicative quotations is fair to the</p> <p>18 counterparty.</p> <p>19 Q. Were the Market Reference</p> <p>20 makers --</p> <p>21 A. Reference Market makers.</p> <p>22 Q. Were the Reference Market makers</p> <p>23 asked to give real quotes in this case</p> <p>24 versus giving indications?</p> <p>25 A. I was not the one who asked the</p>	<p style="text-align: right;">Page 173</p> <p>1 Thompson</p> <p>2 January 1998".</p> <p>3 Are you competent to testify as</p> <p>4 to those matters?</p> <p>5 A. In varying degrees.</p> <p>6 I believe I have already</p> <p>7 testified as to who the principal people</p> <p>8 were, first of all.</p> <p>9 Secondly, obviously, I am highly</p> <p>10 qualified to testify on the role of the</p> <p>11 legal staff.</p> <p>12 Third, there are some terms here</p> <p>13 which simply are either ambiguous or</p> <p>14 irrelevant in the context, such as I don't</p> <p>15 know what you mean by, quote, "risk</p> <p>16 staff", closed quote.</p> <p>17 Q. Okay.</p> <p>18 MR. WAXMAN: Just for the</p> <p>19 record, no objection was lodged by</p> <p>20 counsel as to this notice.</p> <p>21 Q. But you can continue.</p> <p>22 So -- I'm sorry, so you are</p> <p>23 competent to testify as to the legal</p> <p>24 staff's role; is that correct?</p> <p>25 A. That's correct.</p>

44 (Pages 170 to 173)